

**Testimony of Mr. E. Edwin Higbee, Jr.  
N-4 State Grazing Board Member**



**N-4 State Grazing Board**  
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***Surface Transportation Board Hearing  
Finance Docket 35106: Department of Energy Application for a  
Certificate of Public Convenience and Necessity for the Caliente  
Rail Alignment***

**December 4, 2008  
Las Vegas, Nevada**

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N-4 State Grazing Board Member**

**For the Record, my name is Edwin Higbee, Jr and I am a member of the N-4 Grazing Board**

**Mr Chairman and members of the Board, I would like to thank you for your time today, and for an opportunity to discuss the proposed Yucca Mountain Rail Corridor With me today is Mr Jeremy Drew, Resource Specialist with Resource Concepts, Inc. (RCI) of Carson City RCI has been the Board's technical consultant for this project for several years now, and Mr Drew is here today to answer any questions you may have**

**The N-4 Grazing Board is a recognized political sub-division of the State of Nevada We represent the public land ranchers within the Bureau of Land Management's Ely District. The District includes White Pine, Lincoln and portions of Eureka, and Nye Counties The Board has a great deal of interest with this project as it relates to public land ranching. We have been active participants in the NEPA process providing extensive input throughout development of the Rail Environmental Impact Statement. The N-4 Grazing Board has twice requested cooperating agency status in order to help better identify the potential impacts and needed mitigations for this project Both times the Department of Energy denied that request. That being said, I would like to re-emphasize that the N-4 Grazing Board is committed to staying engaged and working with DOE, STB, and BLM in all phases of this project to ensure that those impacted are allowed to continue their ranching operations and way of life**

**In the Final Rail EIS, the DOE states that they are committed to working with impacted parties and ranchers in order to mitigate the impacts associated with construction and operation of the Caliente Rail Corridor We would like to reiterate the importance of this statement In order to maintain the public land ranching operations that will be impacted by this project it is essential that the impacted ranchers are provided the resources and access to appropriate representatives at all phases of the project including design, construction, operations and follow-up monitoring The people on the ground are those who can most readily and accurately identify the impacts of the project, and develop mitigation alternatives that will allow them to operate effectively Some, but not all, of these the impacts and mitigation measures were incorporated in the Final EIS.**

**The Record of Decision that the DOE issued for the Rail EIS stated that "The preliminary best management practices (BMP's) and mitigation measures will be further developed and detailed through the regulatory compliance process, such as the DOE's application for a Certificate of Public Convenience and Necessity to the Surface Transportation Board". As such, we request that the STB exercise its authority to provide further detail and accountability for proper impact identification, mitigation, monitoring and compliance inspection during the life of this project**

**We would ask that the Board include a condition to their certificate requiring the DOE to execute all BMP's, mitigation actions, and processes identified in Chapter 7 of the Rail EIS We would also request that the STB require the DOE's full compliance with any and all stipulations attached to the right-of-way grant issued by the BLM. There are several other items that were not included in the Rail EIS that we would request STB to consider as additional conditions**

Within the Final EIS, the DOE proposed a system where effected parties can request mitigation actions, but the DOE will determine the feasibility of the request. The N-4 Board sees a potential impasse in this process between what a permittee deems as practical mitigation and what DOE considers as suitable mitigation measures. To remedy this potential conflict, the N-4 Board suggests that a mitigation target be set to allow permittees to continue to operate at existing stocking levels. This will require the development of Interim and Long-term Allotment Management plans prior to the start of construction. We would ask that the STB consider a condition to this effect with the goal of allowing public land grazing allotments to continue operations at current stocking levels.

Additionally, the process suggested by DOE will likely be expensive and time consuming for our ranchers. It is imperative that the DOE provide sufficient funding for each affected rancher to hire a range scientist to assist in developing required mitigation actions for their allotment if they so desire.

The entire corridor is located within either the Great Basin or Mohave Desert ecosystems. These ecosystems are some of the most fragile in the world, primarily as a result of the unpredictable and adverse weather conditions and delicate soils. Plant communities have adapted to temperatures that range from freezing to well above 100 degrees and unpredictable rainfall that in some areas averages less than 2-inches annually. In fact, a protocol for successful revegetation has simply not been developed for many of the areas that the corridor will cross. In these cases, research will have to be conducted in order to develop applicable restoration plans. Any disturbed lands will require the use of every available tool. This includes the use of temporary irrigation and adapted plant species to out compete weeds and stabilize soils until native vegetation can become established. The commitment to develop research through entities such as the USDA's Agricultural Research Service, or the local Universities in order to develop site-specific recommendations plans is a must. The use of temporary irrigation, and adapted plants species is also essential in order to promote desirable vegetation while controlling invasive and noxious weeds. However, these tools are not within DOE's list of best management practices. As such, the N-4 Grazing Board requests the STB to include a condition that DOE develops restoration plans in conjunction with experts familiar with restoration of these ecosystems including University Researchers and the Agricultural Research Service. Further, that the DOE adds the use of adapted plant species and temporary irrigation to the list of restoration BMPs.

The absolute best management practice is for the DOE to limit their construction disturbance to the smallest practical extent across the entire corridor. These limits should be mapped during design, marked with temporary bright orange snow fencing in the field, and surveyed to aid in compliance inspection. We would request a condition for this, and emphasize the need for compliance inspection of limits of disturbance throughout construction of the corridor.

It is our understanding that allowing commercial train traffic within the corridor will result in both increased train traffic and increased train speeds. Lincoln County is one of the most rural counties in the entire United States, and the proposed corridor will cross some of the most remote regions of the County. Those who reside in, recreate in, and make a living in or simply

visit these areas seek the solitude and tranquility they now provide. In addition to an overall increase in disturbance, increased train traffic and train speeds will result in

- Increased probability of fire starts
- Increased direct loss of livestock, wildlife and wild horses and more restricted movement of these animals
- Reduced safe access to public lands and private holdings

Wildfire resulting in the long-term loss of wildlife habitat and livestock forage can be crippling to herds and public lands grazing operations. The DOE and appropriate commercial carriers should be responsible for creating and funding pre-fire resource management, fire suppression, and post-fire stabilization due to fire starts as a result of construction or operation of the rail.

Increased train traffic and train speeds will increase the direct loss of wildlife, wild horses and livestock lost due to collisions with trains. The loss of livestock can be partially compensated through direct payments to livestock operators for their loss. However, livestock in these areas have adapted to their surroundings and replacing lost livestock into a desert ranching operation is by no means a one-to-one correlation. Furthermore, the presence of the corridor itself will serve to alter livestock, wild horse and wildlife movement, particularly in areas of cut and fill. This includes daily movements to and from critical forage and water sources as well as seasonal movements and migrations. As such, it is necessary that design considerations take into account proper fencing of the rail in some locations as well as provisions for livestock, wild horse and wildlife underpasses and at-grade crossings. We ask the STB to condition that the location and design of livestock, wild horse and wildlife crossings be developed during design of the rail with input from public land grazing permittees, BLM and State Wildlife officials. We also ask that these parties work collaboratively to establish maximum train speeds throughout the corridor in order to mitigate these impacts.

Maintaining access to the public lands and private land holdings along the rail are crucial. Lincoln County has recently experienced access restrictions along an existing rail line as a result of homeland security and liability concerns. The DOE has committed to maintaining public access to and across the corridor, but given the nature of the shipments along the rail there is a great concern that their commitment to full public access could be overridden at some point in the future. The N-4 Grazing Board asks the STB to condition that the DOE develop a protocol to quickly address and rectify any limited access to or across the corridor in the event that this access is ever restricted.

In summary, the N-4 Grazing Board remains committed to being involved in this project in order to ensure that our ranchers can maintain their livelihoods and lifestyles. The conditions we ask STB to consider would go a long way towards achieving this goal. Once again, I thank you for your time and invite any questions.